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FACSIMILE MESSAGE

Attached please find a Response to Communication and a Request for a One-Month Extension of Time.

Application Number : 09/407,402
 Filing Date : September 28, 1999
 Group Art Init : 1632
 Applicant : Natesan & Gilman
 Title : Chimeric Transcription Factors

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ARIAD 346E US

In The United States Patent And Trademark Office

Serial No. 09/407,402
 Filing Date 3/28/99
 Inventors Natesan & Gilman
 For Chimeric Transcription Factors

Art Group: 1632
 Examiner: Shukla, Ram R.

By fax: 7 3-308-4242
 Commissioner of Patents
 PO Box 1450
 Alexandria, Va 2313-1450

July 29, 2003

Request for One Month Extension & Response to Communication

This is in Response to the Communication mailed on 5/30/03, a response to which, was originally due on 6/30/03. Applicants hereby request a one-month extension for responding and authorize the Commissioner to charge the fee for such extension to Deposit Account No. 01-2315. The new deadline is no later than 7/30/03, and this response should be considered timely filed.

Amendment and Remarks

Applicants appreciate the oversight in failing to address the §112, second paragraph issues raised in the last Office Action, and thank the Examiner for the opportunity to correct this.

The word "consisting of" was cited as the basis for a §112, 2d paragraph rejection on the grounds that it is unclear whether an open or closed meaning is intended. Replacement with "comprising" or "consisting of" was suggested. Applicants respectfully traverse that ground for rejection, since "comprising" is an acceptable and accepted term for use in claims and is synonymous with "consisting of" according to the MPEP. See MPEP 2110.3 Transitional Phrases:

The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. *Molecular Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 229 USPQ 460 (Fed. Cir. 1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davies*, 280 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts").

Claims 39, 40 and 49 – 51 have been amended (see attached) to replace the "capable of" language change is being made solely to advance prosecution, rather than to change the position taken in the Office Action, and no change in meaning is intended by these amendments. These amendments should, however, render moot the remaining §112, 2d

USSN: 09/407,402

Attorney Ref: 346E U

Conclusion

Again, applicants appreciate the Examiner's time and thought on this important case. The case is now considered to be in condition for allowance, which is respectfully requested at this time. If it might be helpful in answering any questions or otherwise advancing prosecution, applicants again invite the Examiner to call their attorney at the number provided below in the hope that agreement can be reached on the allowance of the pending claims.

Respectfully submitted,



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CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being faxed to the US PTO on the date indicated below:

date: July 29, 2003


Sue Wilson